

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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VISTAJET US INC.,

Case No.: 20-cv-05974 (RA) (GWG)

Plaintiff,

v.

WILD WONDER LLC,

Defendant.

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**DECLARATION OF DAVID J. MAHONEY
IN SUPPORT OF DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

DAVID J. MAHONEY, an attorney admitted to practice before the courts of this State and this Federal judicial district declares pursuant to 28 U.S.C. §1746 and under penalty of perjury that the foregoing is true and correct:

1. I am a member of SilvermanAcampora LLP, attorneys for defendant Wild Wonder LLC (“Wild Wonder” or “Defendant”), and as such, I am fully familiar with all of the facts and circumstances set forth herein.

2. I submit this declaration (the “Declaration”) in support of Defendant’s motion seeking entry of an order granting summary judgment pursuant to Federal Rule of Civil Procedure (“FRCP”) Rule 56, in favor of Defendant on Count “1” of Defendant’s counterclaims as set forth in Defendant’s “Answer to the Complaint With Affirmative Defenses and Counterclaims” dated September 28, 2020 [ECF No. 11] for declaratory judgment that the underlying purpose of the contract at issue in this action to have been “frustrated” as a matter of law, as of not later than April 30, 2020, for the reasons set forth further within and throughout this motion.

3. The individual representative of Defendant is Mr. Paulo Lima (“Mr. Lima”) in this action.

4. The individual representative of plaintiff VistaJet US Inc. (“VJUS”) is Ms. Leona Qi (“Ms. Qi”). Another individual, Brian van der Meer (“Mr. Van der Meer”), was at all times relevant to the foregoing, an officer and director of VJUS, and who was an authorized signatory to bind VJUS to contracts.

5. A true and correct copy of the transcript of the March 28, 2022 Deposition of Paulo Lima (the “Lima Dep.”) is attached hereto and made a part hereof as **Exhibit 1**.

6. A true and correct copy of the transcript of the December 16, 2021 Deposition of Leona Qi (the “Qi Dep.”) is attached hereto and made a part hereof as **Exhibit 2**.

7. A true and correct copy of the “Flight Solutions Program” Agreement dated April 30, 2018, and duly executed by Mr. Lima and Mr. Van der Meer as authorized representatives of both plaintiff VistaJet US Inc. (“VJUS”) and Wild Wonder (the “Agreement”) is attached hereto and made a part hereof as **Exhibit 3**.

8. True and correct copies of several email exchanges between Ms. Qi and Mr. Lima between approximately March and April of 2020, consisting of the documents previously marked as Exhibits “10”, “12”, “13”, and “14” as identified within and during the Qi Dep., have here been consolidated into a single exhibit (the “March/April 2020 Emails”) and are attached hereto and made a part hereof as **Exhibit 4**.

9. A true and correct copy of the “Health Declaration Form – COVID-19” which was and is the document previously marked and identified as Exhibit “11” within and during the Qi Dep. (the “Health Waiver”) is attached hereto and made a part hereof as **Exhibit 5**.

10. A true and correct copy of the “Executive Department State of California Executive Order N-33-20” dated March 19, 2020, in the form available on the governmental website of the State of California at <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf> (last accessed on July 22, 2022) (the “Stay at Home Order”) is attached hereto and made a part hereof as **Exhibit 6**.

11. A true and correct copy of the United States Department of Homeland Security “Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response” dated March 19, 2020, in the form available on the governmental website of the Department of Homeland Security’s Office of “Cyber-Infrastructure Security Agency” at <https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf> (last accessed on July 22, 2022) (the “March 19 DHS Memo”) is attached hereto and made a part hereof as **Exhibit 7**.

12. Submitted simultaneously herewith and providing legal argument in support of the relief requested by this motion, Wild Wonder respectfully submits the “Memorandum of Law in Support of Defendant’s Motion for Summary Judgment” dated July 22, 2022 (the “Memo”), the whole of which is incorporated hereto by reference, and made a part hereof.

13. Based on the foregoing, Wild Wonder respectfully submits that the Agreement at issue was “frustrated” and thus unenforceable as void or rescinded as of not later than April 30, 2020 for the reasons set forth in the Memo, and that summary judgment to is appropriate at this time.

WHEREFORE, Defendant respectfully requests the Court grant its Motion in its entirety, and grant such other and further relief as to this Court may seem just and proper.

Dated: Jericho, New York
July 22, 2022



DAVID J. MAHONEY